

## **2009 DRAFTING REQUEST**

### **Assembly Substitute Amendment (ASA-AB130)**

Received: **04/07/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Gundrum (608) 267-5158**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Drunk Driving - other**  
**Drunk Driving - refusals/testing**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Gundrum@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

#### **Pre Topic:**

No specific pre topic given

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#### **Topic:**

Costs of blood draw

---

#### **Instructions:**

See attached

---

#### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	phurley 04/09/2009	bkraft 04/14/2009	rschluet 04/14/2009	_____	cduerst 04/14/2009		
/P2	phurley 04/16/2009	bkraft 04/16/2009	phenry 04/16/2009	_____	lparisi 04/16/2009		
/P3	phurley 05/01/2009	bkraft 05/01/2009	mduchek 05/01/2009	_____	cduerst 05/01/2009		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 05/06/2009	bkraft 05/07/2009	mduchek 05/07/2009	_____	lparisi 05/07/2009	lparisi 05/07/2009	

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1 bjk 5/7  
WMS 5/7  
5/7

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/P2	phurley 04/16/2009	bkraft 04/16/2009	phenry 04/16/2009	_____	lparisi 04/16/2009		

FE Sent For: */P3 bjk 5/1*

*ND*  
*5/1*  
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**<END>**

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/?							
/P1	phurley 04/09/2009	bkraft 04/14/2009	rschluet 04/14/2009	<u>4</u> <u>11</u> <u>16</u>	cdurst 04/14/2009		

FE Sent For:

P2 bjk 4/16

4  
16  
ph

<END>

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/?	phurley	/Pl bjk <sup>u</sup> /10		g/ph 4/14			
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FE Sent For:

<END>



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0037/?  
PJH:.....

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2009 ASSEMBLY BILL 130

1 AN ACT ...; **relating to:** costs of administering tests for intoxication

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 814.65 (4m) of the statutes is created to read:

3 814.65 (4m) BLOOD TEST FEE. (a) ~~The~~ <sup>the defendant</sup> municipal court shall impose and collect:

4 1. Any costs charged to or paid by a law enforcement agency for the withdrawal  
5 of a person's blood under s. 23.33 (4p) if the withdrawal was requested by the law  
6 enforcement agency, upon finding that ~~a person~~ <sup>the defendant</sup> violated ~~[s. 23.33 (4c), or]~~ <sup>the</sup> a local  
7 ordinance in conformity with s. 23.33 (4c).

8 2. Any costs charged to or paid by a law enforcement agency for the withdrawal  
9 of a person's blood under s. 30.684 if the withdrawal was requested by the law  
10 enforcement agency, upon finding that ~~a person~~ <sup>the</sup> violated ~~[s. 30.681 (1), or]~~ <sup>the</sup> a local  
11 ordinance in conformity with s. 30.681 (1).



1           3. Any costs charged to or paid by a law enforcement agency for the withdrawal  
2 of a person's blood under s. 343.305, if the withdrawal was requested by the law  
3 enforcement agency, upon finding that a person violated <sup>the A</sup> [s. 346.63 (1), or] <sup>the</sup> a local  
4 ordinance in conformity with s. 346.63 (1).

5           4. Any costs charged to or paid by a law enforcement agency for the withdrawal  
6 of a person's blood under s. 350.104 if the withdrawal was requested by the law  
7 enforcement agency, upon finding that a person violated <sup>the A</sup> [s. 350.101 (1), or] <sup>the</sup> a local  
8 ordinance in conformity with s. s. 350.101 (1).

9           (b) If at the time the court find that the person committed the violation, the law  
10 enforcement agency has not paid or been charged with the costs of withdrawing the  
11 person's blood, the court shall impose and collect the costs the law enforcement  
12 agency reasonably expects to be charged for the withdrawal, based on the current  
13 charges for this procedure.

14           (c) The court shall disburse the amounts it collects under this section to the law  
15 enforcement agency that requested the blood withdrawal.

16           **SECTION 2.** 973.06 (1) (j) of the statutes is created to read:

17           973.06 (1) (j) Any costs charged to or paid by a law enforcement agency for the  
18 withdrawal of a person's blood under s. 23.33 (4p), 30.684, 343.305, or 350.104, if the  
19 withdrawal was requested by the law enforcement agency. Notwithstanding sub. (2),  
20 the court may not remit this cost. *Add lines 9 to 13.*

21           (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0037/P1

RMR

PJH:.....

bjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT ,  
TO 2009 ASSEMBLY BILL 130

SA  
x-ref

soon  
4-9-09

1 AN ACT <sup>gen.</sup> relating to: costs of administering tests for intoxication

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 814.63 (3m) of the statutes is created to read:

3 814.65(3m) (a) If a defendant is required to appear in court, in addition to any  
4 forfeiture, cost, fee, or surcharge it imposes, the court shall impose and collect from  
5 the defendant:

6 1. Any costs charged to or paid by a law enforcement agency for the withdrawal  
7 of the defendant's blood under s. 23.33 (4p) if the withdrawal was requested by the  
8 law enforcement agency upon finding that the defendant violated s. 23.33 (4c) for a  
9 local ordinance in conformity with s. 23.33 (4c).

10 2. Any costs charged to or paid by a law enforcement agency for the withdrawal  
11 of the defendant's blood under s. 30.684 if the withdrawal was requested by the law

1 enforcement agency upon finding that the defendant violated s. 30.681 (1) or a local  
2 ordinance in conformity with s. 30.681 (1).

3 3. Any costs charged to or paid by a law enforcement agency for the withdrawal  
4 of the defendant's blood under s. 343.305 if the withdrawal was requested by the law  
5 enforcement agency upon finding that the defendant violated s. 346.63 (1) or a local  
6 ordinance in conformity with s. 346.63 (1).

7 4. Any costs charged to or paid by a law enforcement agency for the withdrawal  
8 of the defendant's blood under s. 350.104 if the withdrawal was requested by the law  
9 enforcement agency upon finding that the defendant violated s. 350.101 (1) or a local  
10 ordinance in conformity with s. 350.101 (1).

11 (b) If at the time the court finds that the defendant committed the violation, the  
12 law enforcement agency has not paid or been charged with the costs of withdrawing  
13 the person's blood, the court shall impose and collect the costs the law enforcement  
14 agency reasonably expects to be charged for the withdrawal, based on the current  
15 charges for this procedure.

16 (c) The court shall disburse the amounts it collects under this subsection to the law  
17 enforcement agency that requested the blood withdrawal.

18 **SECTION 2.** 814.65 (4m) of the statutes is created to read:

19 814.65 (3m) (4m) (B) BLOOD TEST FEE. (a) If a defendant is required to appear in  
20 municipal court, in addition to any forfeiture, cost, fee, or surcharge it imposes, the  
21 municipal court shall impose and collect from the defendant:

22 1. Any costs charged to or paid by a law enforcement agency for the withdrawal  
23 of the defendant's blood under s. 23.33 (4p) if the withdrawal was requested by the  
24 law enforcement agency upon finding that the defendant violated a local ordinance  
25 in conformity with s. 23.33 (4c).

2. Any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood under s. 30.684 if the withdrawal was requested by the law enforcement agency upon finding that the defendant violated a local ordinance in conformity with s. 30.681 (1).

3. Any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood under s. 343.305 if the withdrawal was requested by the law enforcement agency upon finding that the defendant violated a local ordinance in conformity with s. 346.63 (1).

4. Any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood under s. 350.104 if the withdrawal was requested by the law enforcement agency upon finding that the defendant violated a local ordinance in conformity with s. 350.101 (1).

(b) If at the time the court finds that the defendant committed the violation, the law enforcement agency has not paid or been charged with the costs of withdrawing the person's blood, the court shall impose and collect the costs the law enforcement agency reasonably expects to be charged for the withdrawal, based on the current charges for this procedure.

(c) The court shall disburse the amounts it collects under this subsection to the law enforcement agency that requested the blood withdrawal.

**SECTION 3.** 973.06 (1) (j) of the statutes is created to read:

973.06 (1) (j) Any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood under s. 23.33 (4p), 30.684, 343.305, or 350.104 if the withdrawal was requested by the law enforcement agency. If at the time the court finds that the defendant committed the violation, the law enforcement agency has not paid or been charged with the costs of withdrawing the person's blood, the

1 court shall impose and collect the costs the law enforcement agency reasonably  
2 expects to be charged for the withdrawal, based on the current charges for this  
3 procedure. Notwithstanding sub. (2), the court may not remit this cost.

4 (END)

these  
costs



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs003741

PJH:bjk:rs

stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**  
**ASSEMBLY SUBSTITUTE AMENDMENT ,**  
**TO 2009 ASSEMBLY BILL 130**

SA—

—regen.

1 **AN ACT** *to create* 814.63 (3m), 814.65 (4m) and 973.06 (1) (j) of the statutes;  
2 **relating to:** costs of administering tests for intoxication.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 **SECTION 1.** 814.63 (3m) of the statutes is created to read:

4 814.63 (3m) (a) If a defendant is required to appear in court, in addition to any  
5 forfeiture, costs, fees, or surcharges it imposes, the court shall impose and collect  
6 from the defendant:

7 1. Any costs charged to or paid by a law enforcement agency for the withdrawal  
8 of the defendant's blood under s. 23.33 (4p) if the withdrawal was requested by the  
9 law enforcement agency upon finding <sup>if the court finds</sup> that the defendant violated s. 23.33 (4c) or a  
10 local ordinance in conformity with s. 23.33 (4c).

1           2. Any costs charged to or paid by a law enforcement agency for the withdrawal  
2 of the defendant's blood under s. 30.684 if the withdrawal was requested by the law  
3 enforcement agency upon finding <sup>if the court finds</sup> that the defendant violated s. 30.681 (1) or a local  
4 ordinance in conformity with s. 30.681 (1).

5           3. Any costs charged to or paid by a law enforcement agency for the withdrawal  
6 of the defendant's blood under s. 343.305 if the withdrawal was requested by the law  
7 enforcement agency upon finding <sup>if the court finds</sup> that the defendant violated s. 346.63 (1) or a local  
8 ordinance in conformity with s. 346.63 (1).

9           4. Any costs charged to or paid by a law enforcement agency for the withdrawal  
10 of the defendant's blood under s. 350.104 if the withdrawal was requested by the law  
11 enforcement agency upon finding <sup>if the court finds</sup> that the defendant violated s. 350.101 (1) or a local  
12 ordinance in conformity with s. 350.101 (1).

13           (b) If at the time the court finds that the defendant committed the violation,  
14 the law enforcement agency has not paid or been charged with the costs of  
15 withdrawing the defendant's blood, the court shall impose and collect the costs the  
16 law enforcement agency reasonably expects to be charged for the withdrawal, based  
17 on the current charges for this procedure.

18           (c) The court shall disburse the amounts it collects under this subsection to the  
19 law enforcement agency that requested the blood withdrawal.

20           **SECTION 2.** 814.65 (4m) of the statutes is created to read:

21           814.65 (4m) BLOOD TEST FEE. (a) If a defendant is required to appear in  
22 municipal court, in addition to any forfeiture, costs, fees, or surcharges it imposes,  
23 the municipal court shall impose and collect from the defendant:

24           1. Any costs charged to or paid by a law enforcement agency for the withdrawal  
25 of the defendant's blood under s. 23.33 (4p) if the withdrawal was requested by the

1 law enforcement agency <sup>if the court finds</sup> upon finding that the defendant violated a local ordinance  
2 in conformity with s. 23.33 (4c).

3 2. Any costs charged to or paid by a law enforcement agency for the withdrawal  
4 of the defendant's blood under s. 30.684 if the withdrawal was requested by the law  
5 enforcement agency <sup>if the court finds</sup> upon finding that the defendant violated a local ordinance in  
6 conformity with s. 30.681 (1).

7 3. Any costs charged to or paid by a law enforcement agency for the withdrawal  
8 of the defendant's blood under s. 343.305 if the withdrawal was requested by the law  
9 enforcement agency <sup>if the court finds</sup> upon finding that the defendant violated a local ordinance in  
10 conformity with s. 346.63 (1).

11 4. Any costs charged to or paid by a law enforcement agency for the withdrawal  
12 of the defendant's blood under s. 350.104 if the withdrawal was requested by the law  
13 enforcement agency <sup>if the court finds</sup> upon finding that the defendant violated a local ordinance in  
14 conformity with s. 350.101 (1).

15 (b) If at the time the court finds that the defendant committed the violation,  
16 the law enforcement agency has not paid or been charged with the costs of  
17 withdrawing the defendant's blood, the court shall impose and collect the costs the  
18 law enforcement agency reasonably expects to be charged for the withdrawal, based  
19 on the current charges for this procedure.

20 (c) The court shall disburse the amounts it collects under this subsection to the  
21 law enforcement agency that requested the blood withdrawal.

22 **SECTION 3.** 973.06 (1) (j) of the statutes is created to read:

23 973.06 (1) (j) Any costs charged to or paid by a law enforcement agency for the  
24 withdrawal of the defendant's blood under s. 23.33 (4p), 30.684, 343.305, or 350.104  
25 if the withdrawal was requested by the law enforcement agency. If at the time the



1 court finds that the defendant committed the violation, the law enforcement agency  
2 has not paid or been charged with the costs of withdrawing the person's blood, the  
3 court shall impose and collect the costs the law enforcement agency reasonably  
4 expects to be charged for the withdrawal, based on the current charges for this  
5 procedure. Notwithstanding sub. (2), the court may not remit these costs.

6 (END)

## Hurley, Peggy

---

**From:** Krueger, Dennis R. [kruegerdr@doj.state.wi.us]  
**Sent:** Friday, May 01, 2009 10:48 AM  
**To:** Hurley, Peggy  
**Subject:** RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

Sorry. We need to keep "if requested by a law enforcement agency"

-----Original Message-----

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]  
Sent: Friday, May 01, 2009 10:35 AM  
To: Krueger, Dennis R.  
Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

Thanks - maybe my coffee hasn't kicked in, but I wasn't sure whether you were agreeing with me!

-----Original Message-----

From: Krueger, Dennis R. [mailto:kruegerdr@doj.state.wi.us]  
Sent: Friday, May 01, 2009 10:35 AM  
To: Hurley, Peggy  
Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

yes

-----Original Message-----

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]  
Sent: Friday, May 01, 2009 10:34 AM  
To: Krueger, Dennis R.  
Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

I think you're right, Dennis. So, in your opinion, we need to keep "if requested by a law enforcement agency?"

-----Original Message-----

From: Krueger, Dennis R. [mailto:kruegerdr@doj.state.wi.us]  
Sent: Friday, May 01, 2009 10:32 AM  
To: Hurley, Peggy; Collins@ci.brookfield.wi.us  
Cc: Schimel, Brad; Dyke, Don; Freimuth, James M - DOJ; Sobotik, John - DOT; Loebel, Karen; Nilsen, Paul - DOT; Rep.Gundrum; rrosch@villageofhartland.com; Tushaus@ci.brookfield.wi.us  
Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

As I recall there was a lengthy discussion about defendants getting a free test during the conference with Rep. Gundrum. Because this is an infrequent occurrence and the implied consent law states that the defendant gets a free test if he requests, it was decided to leave this anomaly in the language.

-----Original Message-----

From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]  
Sent: Friday, May 01, 2009 10:18 AM  
To: Collins@ci.brookfield.wi.us  
Cc: Schimel, Brad; Dyke, Don; Freimuth, James M.; Sobotik, John - DOT; Loebel, Karen; Krueger, Dennis R.; Nilsen, Paul - DOT; Rep.Gundrum; rrosch@villageofhartland.com; Tushaus@ci.brookfield.wi.us  
Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

I am drafting up John's suggested language, but I think we need to keep in "if requested by a law enforcement agency" because, if he complies with the law enforcement agency's request for a breath or blood sample, a defendant is entitled to one free alternate test under s. 343.305 (4).

In places where a law enforcement agency's first choice is a breath test, a defendant may opt for a blood test as well.

It is kind of odd that under the bill a person would be liable for the costs of a blood withdrawal if a blood test is the law enforcement agency's first choice but not if a defendant chooses a blood test as his "free alternative test."

Your thoughts?

Peggy

-----Original Message-----

From: Collins@ci.brookfield.wi.us [mailto:Collins@ci.brookfield.wi.us]

Sent: Friday, May 01, 2009 9:17 AM

To: Hurley, Peggy

Cc: Schimel, Brad; Dyke, Don; Freimuth, James M - DOJ; Sobotik, John - DOT; Loebel, Karen; Krueger, Dennis R - DOJ; Nilsen, Paul - DOT; Rep.Gundrum; rrosch@villageofhartland.com; Tushaus@ci.brookfield.wi.us

Subject: Re: FW: Amendment to AB-130: Reimbursement of Blood Draw Costs

I concur with John Sobotik's proposed language. It's simple and achieves the desired result of obtaining reimbursement for lawful blood draws beyond the one authorized by 343.305. His proposed language could be used throughout the entire bill.

Dean J. Collins  
Assistant Chief of Police  
City of Brookfield Police Dept.  
2100 N. Calhoun Rd.  
Brookfield, WI 53005-5054  
(262) 787-3567  
Fax: (262) 796-6701  
collins@ci.brookfield.wi.us

"Hurley, Peggy"

<Peggy.Hurley@leg

is.wisconsin.gov>

To

"Schimel, Brad"

05/01/2009 08:46

AM

<Brad.Schimel@da.wi.gov>, "Dyke,

Don"

<Don.Dyke@legis.wisconsin.gov>,

"Freimuth, James M - DOJ"

<freimuthjm@doj.state.wi.us>,

"Sobotik, John - DOT"

<John.Sobotik@wisconsin.gov>,

"Loebel, Karen"

<Karen.Loebel@da.wi.gov>, "Krueger,  
Dennis R - DOJ"

<kruegerdr@doj.state.wi.us>,

"Nilsen, Paul - DOT"

<Paul.Nilsen@wisconsin.gov>,

"Rep.Gundrum"

<Rep.Gundrum@legis.wisconsin.gov>,

<rrosch@villageofhartland.com>,

<Tushaus@ci.brookfield.wi.us>,

<Collins@ci.brookfield.wi.us>

cc

Subject

FW: Amendment to AB-130:

Reimbursement of Blood Draw Costs

Hi Everyone,

John Sobotik from DOT forwarded these comments to me yesterday. Your thoughts?

Peggy

From: Sobotik, John - DOT [mailto:John.Sobotik@dot.wi.gov]  
Sent: Thursday, April 30, 2009 3:28 PM  
To: Hurley, Peggy  
Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs

I don't understand why the whole list is needed. Why not just say something along the lines of...

If a defendant is required to appear in court, in addition to any forfeiture, costs, fees or surcharges it imposes, the court shall impose and collect from the defendant any costs charged to or paid by a law enforcement agency for the withdrawal of the defendant's blood if the court finds the defendant violated ss. 23.33(4c), 30.681(1), 346.63(1) or 350.101(1).

I would just ignore the authority for the draw. Who cares? If there is a concern about illegal blood draws being charged then just stick "pursuant to law" after the word "blood" in the sentence. A similar strategy could be employed in the other sections and significantly shorten and simplify them. That seems to be the strategy you used in s. 973.06; I don't know why it won't work in the other sections.

With regard to the situation he describes, what happens is this:

- (1) Cops stop driver.
- (2) Cops establish probable cause to arrest.
- (3) Cops read the informing the accused and ask driver to submit to test.
- (4) Guy refuses.
- (5) Cops ask hospital to withdraw blood anyway.
- (6) Blood is drawn by hospital and sent to state lab for testing.

Another alternative is this:

- (1) Cops stop driver.
- (2) Cops establish probable cause to arrest.
- (3) Cops ask hospital to withdraw blood.
- (4) Blood is drawn by hospital and sent to state lab for testing.

Either way, the cops get blood. Neither test is a test can result in admin suspension. That's because of the way 343.305(7) reads:

(a) If a person submits to chemical testing administered in accordance with this section and any test results indicate the presence of a detectable amount of a restricted controlled substance in the person's blood or a prohibited alcohol concentration, the law enforcement officer shall report the results to the department and take possession of the person's license and forward it to the department.

Where the guy refuses, he doesn't "submit." Therefore, administrative suspension is inappropriate.

- John

-----  
John Sobotik  
Asst. General Counsel  
Wisconsin Dept. of Transportation  
4802 Sheboygan Avenue, Room 115B  
P.O. Box 7910  
Madison, WI 53707-7910  
Phone: (608) 267 9320  
Fax: (608) 267 6734

> -----Original Message-----

> From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]  
> Sent: Thursday, April 30, 2009 11:46 AM

> To: Sobotik, John - DOT  
> Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs  
>  
>  
> Thanks, John. Perhaps I am misinterpreting the situation the officer  
> is describing, which seems to be an arrest following a refusal. In  
> any event, do you think it makes sense to simply remove the "pursuant  
> to s. 343.305" (or the relevant implied consent statutes cited for  
> each case) in the draft?  
> I think that's the simplest approach.  
>  
> Peggy  
>  
> -----Original Message-----  
> From: Sobotik, John - DOT [mailto:John.Sobotik@dot.wi.gov]  
> Sent: Thursday, April 30, 2009 11:44 AM  
> To: Hurley, Peggy  
> Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs  
>  
> Peggy:  
>  
> I can tell you that DMV does not interpret the law that way.  
> If a driver consents to a test or is incapable of consent and blood is  
>  
> drawn, we treat those as implied consent tests and will  
> administratively suspend a DL. On the other hand, if the driver  
> refuses chemical testing and officers forcibly collect blood evidence  
> outside of the implied consent law, or if they never bother with the  
> implied consent law formalities at all (which is not uncommon in  
> serious injury or death  
> cases) we do not treat those test results as implied consent results  
> and will not uphold an officer's order for an administrative  
> suspension. If the driver refused tests, then he can be issued a  
> refusal rev order.  
>  
> I believe there is case law consistent with this approach, but I don't  
>  
> have time to seek it out this a.m.  
>  
> - john  
>  
>  
>  
> -----  
> John Sobotik  
> Asst. General Counsel  
> Wisconsin Dept. of Transportation  
> 4802 Sheboygan Avenue, Room 115B  
> P.O. Box 7910  
> Madison, WI 53707-7910  
> Phone: (608) 267 9320  
> Fax: (608) 267 6734  
>  
> > -----Original Message-----  
> > From: Hurley, Peggy [mailto:Peggy.Hurley@legis.wisconsin.gov]  
> > Sent: Wednesday, April 29, 2009 4:35 PM  
> > To: Schimel, Brad; Collins@ci.brookfield.wi.us  
> > Cc: Dyke, Don - LEGIS; Freimuth, James M - DOJ; Sobotik,  
> > John - DOT;  
> > Loebel, Karen; Krueger, Dennis R - DOJ; Nilsen, Paul - DOT;  
> > Rep.Gundrum; rrosch@villageofhartland.com;  
> > Tushaus@ci.brookfield.wi.us  
> > Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs  
> >  
> >  
> > Brad,  
> >  
> > I share your concerns about "incident to arrest." That

> phrase is not  
> > used anywhere else in the statutes and has been interpreted to mean  
> > different things by the courts, not all of which apply to the  
> > situation we are discussing.  
> >  
> > I maintain that blood drawn in a drunken driving case, whether  
> > voluntarily or forcibly after arrest, is a request made  
> pursuant to s.  
> > 343.305 (or other relevant implied consent sections).  
> However, if the  
> > prosecutors and/or law enforcement officers think this will  
> cause them  
> > more headaches down the line, I can remove the reference and simply  
> > have defendants pay whenever a court makes a finding of a violation  
> > and the violator had blood removed upon the request of an officer.  
> >  
> > The other sections in the substitute amendment also cite  
> the relevant  
> > implied consent test for intoxication statutory section; do  
> you think  
> > those should be removed as well?  
> >  
> >  
> > -----Original Message-----  
> > From: Schimel, Brad [mailto:Brad.Schimel@da.wi.gov]  
> > Sent: Wednesday, April 29, 2009 4:18 PM  
> > To: Collins@ci.brookfield.wi.us  
> > Cc: Dyke, Don; Freimuth, James M - DOJ; Sobotik, John -  
> DOT; Loebel,  
> > Karen; Krueger, Dennis R - DOJ; Nilsen, Paul - DOT; Hurley, Peggy;  
> > Rep.Gundrum; rrosch@villageofhartland.com;  
> > Tushaus@ci.brookfield.wi.us  
> > Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs  
> >  
> > Apparently, I was wrong when I suggested that I could "see  
> Assistant  
> > Chief Collins' concern." Thanks for setting me straight.  
> > Let me try again.  
> > Perhaps the language on page 2 line 6 and page 3 line 8 should read  
> > one of the two following ways:  
> > 1. "of the defendant's blood if the withdrawal was  
> requested by the  
> > law...." This simply leaves out the reference to Implied Consent  
> > altogether.  
> > OR  
> > 2. "of the defendant's blood under s. 343.305 or pursuant to any  
> > other legal means if the withdrawal was requested by the law...."  
> > This acknowledges that the sample could have been drawn  
> under a legal  
> > basis besides Implied Consent, but still leaves in the reference to  
> > Implied Consent. I am not sure why we would need to leave that  
> > reference in, though. Is there some reason for doing so?  
> > Does that resolve the problem? Am I missing the point again?  
> > I am uncomfortable with using the phrase "incident to  
> arrest", as that  
> > term has other connotations. Maybe it is just the timing of this  
> > discussion that has me twitchy about things "incident to arrest".  
> > Brad  
> >  
> > -----Original Message-----  
> > From: Collins@ci.brookfield.wi.us  
> [mailto:Collins@ci.brookfield.wi.us]  
> > Sent: Wednesday, April 29, 2009 1:55 PM  
> > To: Schimel, Brad  
> > Cc: Dyke, Don; Freimuth, James M - DOJ; Sobotik, John -  
> DOT; Loebel,  
> > Karen; Krueger, Dennis R - DOJ; Nilsen, Paul - DOT; Hurley, Peggy;

> > Rep.Gundrum; rrosch@villageofhartland.com;  
> Tushaus@ci.brookfield.wi.us  
> > Subject: RE: Amendment to AB-130: Reimbursement of Blood Draw Costs  
> >  
> >  
> >  
> > My concern was not so much addressed to the "request' by law  
> > enforcement as to the requirement that the request be made "under s.  
> > 343.305." If the  
> > blood is forcibly drawn against the driver's wishes, is the  
> draw still  
> > done "under s. 343.305"? I submit that the blood is then  
> drawn under  
> > different legal authority, e.g. exigent search incident to arrest  
> > (ephemeral evidence). Should the draft be amended to include that  
> > authority?  
> >  
> > Dean J. Collins  
> > Assistant Chief of Police  
> > City of Brookfield Police Dept.  
> > 2100 N. Calhoun Rd.  
> > Brookfield, WI 53005-5054  
> > (262) 787-3567  
> > Fax: (262) 796-6701  
> > collins@ci.brookfield.wi.us  
> >  
> >  
> >  
> > "Schimel, Brad"  
> >  
> > <Brad.Schimel@da.  
> > wi.gov>  
> > To  
> >  
> <Collins@ci.brookfield.wi.us>,  
> >  
> > 04/29/2009 11:43 "Rep.Gundrum"  
> >  
> > AM  
> > <Rep.Gundrum@legis.wisconsin.gov>  
> >  
> >  
> > cc  
> >  
> > "Dyke, Don"  
> >  
> >  
> <Don.Dyke@legis.wisconsin.gov>,  
> >  
> >  
> > "Freimuth, James M - DOJ"  
> >  
> > <freimuthjm@DOJ.STATE.WI.US>,  
> >  
> > "Sobotik, John - DOT"  
> >  
> > <John.Sobotik@wisconsin.gov>,  
> >  
> > "Krueger, Dennis R - DOJ"  
> >  
> > <kruegerdr@doj.state.wi.us>,  
> >  
> > "Loebel, Karen"  
> >  
> > <Karen.Loebel@da.wi.gov>,  
> > "Nilsen,  
> > Paul - DOT"



> >  
> >  
> >  
> >  
> >  
> >  
> > <Peggy.Hurley@legis.wisconsin.gov>,  
> >  
> <rrosch@villageofhartland.com>  
> >  
> >  
> > Subject  
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> > Costs  
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> >  
> > I see Asst. Chief Collins' concern. We do not want those  
> who refuse  
> > and have their blood taken without consent to avoid paying,  
> when those  
> > who were cooperative and agreed to provide a sample under Implied  
> Consent may be required to pay.  
> > That said, I think that the sample taken under the 4th  
> Amendment after  
> > a refusal is still "requested" by law enforcement. Since the  
> > underlying issue is about fees charged by the hospitals for blood  
> > samples that law enforcement officers request them to draw, I think  
> > that even a sample taken with multiple officers holding a  
> suspect down  
> > is still a sample "requested by law enforcement". From the  
> suspect's  
> > perspective, it is a very forceful request, but they are still  
> > requesting that hospital staff make the blood draw and are still  
> > requesting that the suspect submit without a fight.  
> > I think the language covers all of the situations.  
> > Brad Schimel  
> >  
> > -----Original Message-----  
> > From: Collins@ci.brookfield.wi.us  
> > [mailto:Collins@ci.brookfield.wi.us]  
> > Sent: Wednesday, April 29, 2009 10:25 AM  
> > To: Rep.Gundrum  
> > Cc: Dyke, Don; Freimuth, James M - DOJ; Sobotik, John -  
> DOT; Krueger,  
> > Dennis R - DOJ; Loebel, Karen; Nilsen, Paul - DOT; Hurley, Peggy;  
> > rrosch@villageofhartland.com; Schimel, Brad  
> > Subject: Re: Amendment to AB-130: Reimbursement of Blood Draw Costs  
> >  
> >  
> >

> > Mark:

> > Thanks for keeping me in the loop. I have only one  
> > observation/suggestion concerning the language on page 2,  
> line 6 and  
> > on page 3, line 8 and wherever else it may appear in the  
> bill: "for  
> > the withdrawal of the defendant's blood under s. 343.305 if the  
> > withdrawal was requested by the law enforcement agency, ..."

> > My concern is with suspects who refuse to provide a sample  
> under the  
> > Implied Consent law (343.305). Under those circumstances,  
> most police  
> > agencies would take blood forcibly under a 'search incident  
> to arrest'  
> > theory rather than 343.305. [See Wis. v. Marshall, 2002  
> WIApp 73 at  
> > para.  
> > 12; 251  
> > Wis.2d 408.]

> > What do you think about adding language to the phrase above:  
> > "under s.  
> > 343.305 OR INCIDENT TO ARREST" or by including a reference  
> to 353.305  
> > (3) (c)?

> > Dean J. Collins  
> > Assistant Chief of Police  
> > City of Brookfield Police Dept.  
> > 2100 N. Calhoun Rd.  
> > Brookfield, WI 53005-5054  
> > (262) 787-3567  
> > Fax: (262) 796-6701  
> > collins@ci.brookfield.wi.us

> > "Rep.Gundrum"  
> > <Rep.Gundrum@legi  
> > s.wisconsin.gov>  
> > To  
> > "Dyke, Don"  
> > 04/28/2009 03:42  
> <Don.Dyke@legis.wisconsin.gov>,  
> > PM  
> > "Schimel, Brad - DAIT"  
> > <Schimel.Brad@mail.da.state.wi.us>,  
> > "Loebel, Karen - DAIT"  
> > <Loebel.Karen@mail.da.state.wi.us>,  
> > "Sobotik, John - DOT"  
> > <John.Sobotik@wisconsin.gov>,  
> > <Collins@ci.brookfield.wi.us>,  
> >

> >  
> <rrosch@villageofhartland.com>,  
> >  
> > "Freimuth, James M - DOJ"  
> > <freimuthjm@doj.state.wi.us>,  
> > "Krueger, Dennis R - DOJ"  
> > <kruegerdr@doj.state.wi.us>,  
> > "Nilsen, Paul - DOT"  
> > <Paul.Nilsen@wisconsin.gov>  
> >  
> > cc  
> > "Hurley, Peggy"  
> >  
> > <Peggy.Hurley@legis.wisconsin.gov>  
> >  
> > Subject  
> > Amendment to AB-130:  
> > Reimbursement  
> > of Blood Draw Costs  
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> >  
> >  
> > (Embedded image moved to file: pic07870.jpg) All, attached is an  
> > amendment that was drafted by the Legislative Reference Bureau  
> > following from our meeting/discussion regarding the bill for the  
> > reimbursement of blood draw costs. If you get a free  
> > moment over the  
> > next few days, could you provide me your thoughts on  
> > whether you think  
> > it answers the issues we were discussing and does so in the proper  
> > way.  
> >  
> > Thanks.  
> >  
> > Mark  
> >  
> > (See attached file: 09s0037P2.pdf)  
> >  
> >  
> >  
>



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs00377

PJH:bjk:ph

stay

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2009 ASSEMBLY BILL 130

SA

By  
S. J. am

regen.

- 1 AN ACT *to create* 814.63 (3m), 814.65 (4m) and 973.06 (1) (j) of the statutes;  
2 relating to: costs of administering tests for intoxication.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

- 3 SECTION 1. 814.63 (3m) of the statutes is created to read:

- 4 814.63 (3m) (a) If a defendant is required to appear in court, in addition to any  
5 forfeiture, costs, fees, or surcharges it imposes, the court shall impose and collect  
6 from the defendant:

- 7 <sup>NO</sup> 1 ~~Any~~ costs charged to or paid by a law enforcement agency for the withdrawal  
8 of the defendant's blood under s. 23.33 (4p) if the withdrawal was requested by the  
9 law enforcement agency if and the court finds that the defendant violated s. 23.33 (4c)  
10 or a local ordinance in conformity with s. 23.33 (4c)

thereof

1300681  
346639  
350001(1)

1           2. Any costs charged to or paid by a law enforcement agency for the withdrawal  
2 of the defendant's blood under s. 30.684 if the withdrawal was requested by the law  
3 enforcement agency, if the court finds that the defendant violated s. 30.681 (1) or a  
4 local ordinance in conformity with s. 30.681 (1).

5           3. Any costs charged to or paid by a law enforcement agency for the withdrawal  
6 of the defendant's blood under s. 343.305 if the withdrawal was requested by the law  
7 enforcement agency, if the court finds that the defendant violated s. 346.63 (1) or a  
8 local ordinance in conformity with s. 346.63 (1).

9           4. Any costs charged to or paid by a law enforcement agency for the withdrawal  
10 of the defendant's blood under s. 350.104 if the withdrawal was requested by the law  
11 enforcement agency, if the court finds that the defendant violated s. 350.101 (1) or  
12 a local ordinance in conformity with s. 350.101 (1).

13           (b) If at the time the court finds that the defendant committed the violation,  
14 the law enforcement agency has not paid or been charged with the costs of  
15 withdrawing the defendant's blood, the court shall impose and collect the costs the  
16 law enforcement agency reasonably expects to be charged for the withdrawal, based  
17 on the current charges for this procedure.

18           (c) The court shall disburse the amounts it collects under this subsection to the  
19 law enforcement agency that requested the blood withdrawal.

20           **SECTION 2.** 814.65 (4m) of the statutes is created to read:

21           814.65 (4m) BLOOD TEST FEE. (a) If a defendant is required to appear in  
22 municipal court, in addition to any forfeiture, costs, fees, or surcharges it imposes,  
23 the municipal court shall impose and collect from the defendant.

24           ~~No~~ 1. Any costs charged to or paid by a law enforcement agency for the withdrawal  
25 of the defendant's blood under s. 23.33 (4p) if the withdrawal was requested by the

1 law enforcement agency, <sup>and</sup> if the court finds that the defendant violated a local  
2 ordinance in conformity with s. 23.33 (4c) <sup>300681(1), 346063, or 350101</sup>

3 2. Any costs charged to or paid by a law enforcement agency for the withdrawal  
4 of the defendant's blood under s. 30.684 if the withdrawal was requested by the law  
5 enforcement agency, if the court finds that the defendant violated a local ordinance  
6 in conformity with s. 30.681 (1).

7 3. Any costs charged to or paid by a law enforcement agency for the withdrawal  
8 of the defendant's blood under s. 343.305 if the withdrawal was requested by the law  
9 enforcement agency, if the court finds that the defendant violated a local ordinance  
10 in conformity with s. 346.63 (1).

11 4. Any costs charged to or paid by a law enforcement agency for the withdrawal  
12 of the defendant's blood under s. 350.104 if the withdrawal was requested by the law  
13 enforcement agency, if the court finds that the defendant violated a local ordinance  
14 in conformity with s. 350.101 (1).

15 (b) If at the time the court finds that the defendant committed the violation,  
16 the law enforcement agency has not paid or been charged with the costs of  
17 withdrawing the defendant's blood, the court shall impose and collect the costs the  
18 law enforcement agency reasonably expects to be charged for the withdrawal, based  
19 on the current charges for this procedure.

20 (c) The court shall disburse the amounts it collects under this subsection to the  
21 law enforcement agency that requested the blood withdrawal.

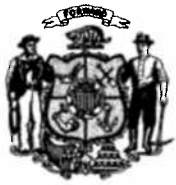
22 SECTION 3. 973.06 (1) (j) of the statutes is created to read:

23 973.06 (1) (j) <sup>Any</sup> costs charged to or paid by a law enforcement agency for the  
24 withdrawal of the defendant's blood under s. 23.33 (4p), 30.684, 343.305, or 350.104  
25 if the withdrawal was requested by the law enforcement agency. If at the time the

If the  
defendant  
violated  
s. 23.33 (4p),  
30.684,  
343.305, or  
350.104

1 court finds that the defendant committed the violation, the law enforcement agency  
2 has not paid or been charged with the costs of withdrawing the person's blood, the  
3 court shall impose and collect the costs the law enforcement agency reasonably  
4 expects to be charged for the withdrawal, based on the current charges for this  
5 procedure. Notwithstanding sub. (2), the court may not remit these costs.

6 (END)



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRBs0037/P3  
PJH:bjk:md

1  
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
ASSEMBLY SUBSTITUTE AMENDMENT,  
TO 2009 ASSEMBLY BILL 130

SA

Inserts

5-6-09  
SOM

regen.  
Except as provided in  
paid (d) if

1 AN ACT *to create* 814.63 (3m), 814.65 (4m) and 973.06 (1) (j) of the statutes;  
2 relating to: costs of administering tests for intoxication.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 814.63 (3m) of the statutes is created to read:

4 814.63 (3m) (a) If a defendant is required to appear in court, in addition to any  
5 forfeiture, costs, fees, or surcharges it imposes, the court shall impose and collect  
6 from the defendant any costs charged to or paid by a law enforcement agency for the  
7 withdrawal of the defendant's blood if the withdrawal was requested by the law  
8 enforcement agency and the court finds that the defendant violated s. 23.33 (4c),  
9 30.681, 346.63, 350.101, or a local ordinance in conformity therewith.

10 (b) If at the time the court finds that the defendant committed the violation,  
11 the law enforcement agency has not paid or been charged with the costs of

Except as provided in  
paid (d) if



1 withdrawing the defendant's blood, the court shall impose and collect the costs the  
2 law enforcement agency reasonably expects to be charged for the withdrawal, based  
3 on the current charges for this procedure.

4 **Insert 1** (c) The court shall disburse the amounts it collects under this subsection to the  
5 law enforcement agency that requested the blood withdrawal.

6 **SECTION 2.** 814.65 (4m) of the statutes is created to read:

7 **814.65 (4m) BLOOD TEST FEE.** (a) *Except as provided in para (d) if* If a defendant is required to appear in  
8 municipal court, in addition to any forfeiture, costs, fees, or surcharges it imposes,  
9 the municipal court shall impose and collect from the defendant any costs charged  
10 to or paid by a law enforcement agency for the withdrawal of the defendant's blood  
11 if the withdrawal was requested by the law enforcement agency and the court finds  
12 that the defendant violated a local ordinance in conformity with s. 23.33 (4c), 30.681,  
13 346.63, or 350.101. *Except as provided in para (d) if*

14 (b) *Except as provided in para (d) if* If at the time the court finds that the defendant committed the violation,  
15 the law enforcement agency has not paid or been charged with the costs of  
16 withdrawing the defendant's blood, the court shall impose and collect the costs the  
17 law enforcement agency reasonably expects to be charged for the withdrawal, based  
18 on the current charges for this procedure.

19 **Insert 2** (c) The court shall disburse the amounts it collects under this subsection to the  
20 law enforcement agency that requested the blood withdrawal.

21 **SECTION 3.** 973.06 (1) (j) of the statutes is created to read:

22 **973.06 (1) (j)** If the defendant violated s. 23.33 (4c), 30.681, 346.63, or 350.101,  
23 any costs charged to or paid by a law enforcement agency for the withdrawal of the  
24 defendant's blood that was requested by the law enforcement agency If at the time  
25 the court finds that the defendant committed the violation, the law enforcement

**Insert 3**

940009 (1) or  
940025

1 agency has not paid or been charged with the costs of withdrawing the person's blood,  
2 the court shall impose and collect the costs the law enforcement agency reasonably  
3 expects to be charged for the withdrawal, based on the current charges for this  
4 procedure. Notwithstanding sub. (2), the court may not remit these costs.

5 (END)

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBs0037/03ins<sup>e1</sup>  
PJH:bjk:md

**INSERT 1:**

¶ (d) The court may not impose on the defendant any cost for an alternative test  
> provided free of charge as described in s. 343.305(4).  
Δ

**INSERT 2:**

¶ (d) The court may not impose on the defendant any cost for an alternative test  
> provided free of charge as described in s. 343.305(4).  
Δ

**INSERT 3:**

<sup>NO</sup>¶ , except that the court may not impose on the defendant any cost for an  
> alternative test provided free of charge as described in s. 343.305(4).  
Δ